



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TAX RULING 82-7

December 10, 1982

- Personal Income Tax
Voluntary Termination Incentive Payments

A question has been raised concerning the Delaware income tax treatment of voluntary termination incentive payments received by non-resident individuals from a Delaware employer pursuant to a voluntary termination plan adopted by the employer. Under the plan, those employees who apply and qualify for voluntary termination will receive an amount (incentive payment) equal to one weeks' pay for each year of employment with the company. The employee may elect to receive the payment under one of the following options: (1) lump sum at the time of termination, or (2) lump sum deferred to the year following termination, or (3) 12 installments commencing on the date of termination, or (4) 24 installments commencing on the date of termination.

Section 1121, 30 Del. C., provides, in general, that the taxable income of a non-resident individual consists of that portion of his Federal adjusted gross income which is derived from sources within Delaware. Section 1122 (b), 30 Del. C., provides that items of income, gain, loss and deduction derived from, or connected with, sources within this State are those items attributable to:

"(1) Compensation, other than pensions, as an employee in the conduct of the business of his employer, for personal services (i) rendered in this State, or (ii) attributable to employment in this State and not required to be performed elsewhere;..."

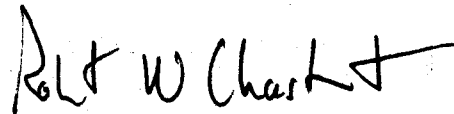
The voluntary termination payments are separate from and in addition to any pension rights to which the employee is eligible. Accordingly, such payments do not constitute and cannot be considered the equivalent of pension income, which would be excluded from Delaware sourced income under the above statutory provision.

For Federal income tax purposes, these voluntary termination incentive

payments are treated as compensation for personal services and includible in Federal adjusted gross income. Hence, with respect to Delaware residents, such payments flow through and are includible in Delaware taxable income in the year of receipt, since no statutory modification to Federal adjusted gross income is provided under Delaware law for such payments.

With respect to non-residents working in Delaware, such voluntary termination incentive payments, which are similar or equivalent to "severance pay," constitute income derived from Delaware sources since they represent compensation, as an employee in the conduct of the business of the employer, for personal services rendered in this State or attributable to employment in this state and not required to be performed elsewhere. The payments are for services rendered currently, with the amount of the payment being determined or measured by the number of years of employment with the company. The purpose of the voluntary termination incentive policy is to encourage employees to voluntarily terminate employment so as to minimize involuntary terminations by the company for lack of work, which clearly evidences that the payments are made in the conduct of the business of the employer. Accordingly, the payments are derived from Delaware sources and will flow thru and be includible in Delaware taxable income of such non-resident employees. The voluntary termination incentive payments may be included in the formula used for determining the portion of taxable wages which are subject to apportionment for days worked out of the state during the last year of employment.

Employers should withhold Delaware income tax on all such payments for both resident and non-resident employees.



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Director of Revenue

RRS/mrs

25-06-82-12-43